Acquiring Services Using Multiple Award Instrument Under Section 803

Oct 25, 2002

Abbreviations Defined

- **FASA- Federal Acquisition Streamlining Act of 1993**
- **FSS – Federal Supply Schedule**
- **MAS – Multiple Award Schedules**
- **MAC – Multi-Agency Contract**
- **GWAC – Government-Wide Acquisition Contract**
- **IDIQ – Indefinite Delivery/Indefinite Quantity**
- **BPA – Blanket Purchasing Agreement**
- **BOA – Basic Ordering Agreement**

THE PROBLEM

- **Congress believes that the Department of Defense is not maintaining a competitive environment throughout the life of multiple award contracting vehicles.**
- **This was Congress' intent when it included multiple award IDIQ contracts in FASA.**

Background Since FASA

- **FASA permitted task orders using multiple award instruments**
- **Law requires all multiple award contractors be given "Fair Opportunity" to compete for orders**
- **Only 4 specific exceptions to "Fair Opportunity"**

Section 803 of P.L. 107-107

- DoD issued DFARS policy requiring competition in the purchase of services under multiple award contracts on October 25, 2002.
  - Exceptions to fair opportunity in FASA apply to orders under FSS Schedule contracts.
  - Adds a new exception for FSS–orders from a source specified in a statute

FAIR OPPORTUNITY EXCEPTIONS

- **Agency's need is of such unusual urgency that providing an opportunity to all awardees would result in unacceptable delays.**
- **Only one source is capable of responding due to the unique or specialized nature of the work.**

Other FASA Exceptions

- **The new work is a logical follow-on to an existing task order under the same contract and contractors were given a fair opportunity to be considered on the original order.**
- **The order must be placed with a particular contractor in order to satisfy a minimum guarantee.**

The New Exception

- **Section 803 added a new exception– if a statute expressly authorizes or requires that the purchase be made from a specified source, the 803 procedures may be waived**
  - **An example of this type of situation would be that there is a single award mandatory FSS contract**

Applicability

- **The new rules apply to <u>all</u> orders for services over $100,000 under multiple award vehicles.**
- **There are 2 scenarios**
  - **Orders under FSS contracts**
  - **All other orders, including those under multiple award BPAs**

Orders under FSS Contracts

The CO must EITHER

- **Issue the notice to as many schedule holders as practicable, consistent with market research appropriate to the circumstances, to reasonably ensure that proposals will be received from at least 3 sources that offer the required work; OR**
- **Contact all schedule holders that offer the required work by informing them of the opportunity for award.**

Orders Under FSS

- **Market research is key.**
- **CO has discretion, but it is linked to good market research.**
- **CO must understand which schedule contractors can do the work.**

Orders Under FSS

- **If less than 3 proposals are received, the CO must document why reasonable efforts would not result in more offers.**
- **The only exceptions to “fair opportunity” are the 4 exceptions specified under FASA and the new 803 exception for statutorily required/permitted source.**

All non-FSS orders

- **The CO must compete among all awardees/BPA holders within the portfolio of contract vehicles established for the same requirement.**
  - **No set-asides or segmentation.**
- **All awardees that offer the required work must be given the opportunity to submit a proposal .**
  - **Provide a copy of the SOW/SOO and the selection criteria.**

All non-FSS orders

- **The CO must consider all proposals submitted.**
- **The only exceptions to “fair opportunity” are the 4 exceptions specified under FASA.**

Frequently Asked Questions

Do Section 803 procedures apply to my order?

- Section 803 applies to ALL orders for services over $100K placed on or after October 25, 2002 by DoD or that use DoD appropriations.
- Section 803 does not apply to orders for supplies or to orders for services at or under $100K.

What do I use if 803 does not apply?

- Orders against FSS schedule contracts
  - Task orders $100K or less --Use FSS special procedures for services.
  - Delivery orders-- Use “go to 3 capable contractors” rule.

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…803 does not apply?

- **Orders under BPAs**
  - **Follow GSA procedures for those based on FSS contracts.**
  - **Follow Part 13.303 rules for all other BPAs.**
- **Delivery orders or task orders less than $100K against other multiple award vehicles**
  - **Use FAR Part 16.505 procedures and exceptions.**

Can I do a small business set aside?

- 803 does not specifically authorize use of a small business set aside, as it requires competition among “all” capable contractors.
- You may not exclude participation by other than small businesses in awards of delivery orders under non-FSS vehicles

What about my small business goals?

- **You are encouraged to offer capable small businesses an opportunity to submit a proposal as part of the “get 3” process for placing orders against FSS contracts.**
- **You may take credit for awards to small businesses.**

What about orders against other multiple award vehicles– can I use set asides?

- Section 803 does not permit the use of set asides a part of the ordering procedures under non-FSS contract vehicles.
- You must allow all capable awardees within your established portfolio an opportunity to submit a proposal and have it fairly considered for award.

How do I perform market research?

- **If you are ordering from an FSS schedule, use the e-schedules library to view key words associated with a contractor's capabilities and, in most cases, link to the contractor's website for a detailed description of its capabilities.**

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…market research?

- **When using an FSS schedule, SINs provide a first cut at distinguishing among contractor capabilities. They group contractors by sub-categories that closely link to many requirement descriptions.**

What if I am not using an FSS schedule? How can I tell which contractors are capable of doing the work?

- **The goal is to maintain competition throughout the lifetime of the contract vehicle by establishing a portfolio of contracts/BPAs that complement each other.**

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…capable of doing the work?

- As part of establishing the “right” portfolio for your requirement, you must understand each contractor’s capabilities as part of the source selection process.
- Use that information when placing orders throughout the life of the contract vehicles.

Why does the rule apply to civilian agencies when only the DFARS has been changed?

- **DFARS 216.505-70(a)(3) states the rules apply to non-DoD agencies that are spending DoD money.**
- **Congress may establish rules that apply to a given appropriation. In this case, they want the rules to apply to all funds appropriated for DoD use.**

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…DFARS has been changed?

- **The Economy Act rules in FAR 17.504(d)(2) anticipate that there may be special procurement procedures that apply to some appropriations.**
  - **The DoD requiring office must remind civilian agencies that are placing orders for us to follow 803 procedures.**

What happens if I get less than 3 proposals?

- **For orders against FSS schedules, if you can document in the file that you did adequate market research to allow you to predict with reasonable certainty that you would expect to get at least 3 proposals from capable contractors, given the number that you contacted, you may press on with award of the task order.**

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…less than 3 proposals?

- **The contracting officer must determine that the efforts were reasonable and document the file.**
- **Market research on historical rates for receiving proposals for similar requirements and contractor indications of interest are examples of pertinent information that can be used to predict response rates.**

What happens if I get less than 3 proposals on non FSS orders?

- There is no requirement to get at least 3 responses on <u>non</u> FSS orders– you just need to contact all capable contractors within the established portfolio of contracts.

Why do I have to determine the price of an order against an FSS contract is fair and reasonable? The FAR says that the prices on the schedule contracts are fair and reasonable prices!

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…fair and reasonable prices!

- **While prices have been established per labor hour, the exact mix of labor and materials that will be used for your requirement was not negotiated by the GSA contracting officer.**

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…fair and reasonable prices!

- It is up to the contracting officer who is placing an order to determine that the mix of labor and materials is reasonable for that requirement.

Summary

Section 803 addresses task orders for services over $100,000.

Emphasis is on maintaining competition throughout the contract vehicle life.

When in doubt – provide all qualified contractors the opportunity to be considered for award.

Consider small businesses

Questions?

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